BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ALICE D. JONES)
Claimant)
VS.	j
) Docket No. 1,004,705
HUBCO, INC.)
Respondent)
AND)
)
EMC INSURANCE COMPANIES)
Insurance Carrier)

ORDER

Respondent requests Appeals Board (Board) review of a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on September 23, 2002, wherein he granted claimant workers' compensation benefits in the form of medical treatment after determining that claimant suffered accidental injury which arose out of and in the course of her employment with the respondent.

Issues

Did claimant sustain her burden of proving she suffered an accidental injury arising out of and in the course of her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Board finds the Order of the Administrative Law Judge should be affirmed. The Administrative Law Judge found that claimant carried her burden of proving that she met with personal injury by accident arising out of and in the course of employment with respondent. This issue turns primarily upon the credibility of claimant.

The evidentiary record contains conflicting evidence as to whether claimant sustained an accident at work. The Administrative Law Judge had an opportunity to observe the in-person testimony of claimant, including claimant's demeanor and credibility while she was testifying at the preliminary hearing. Where the evidentiary record is conflicting, the Board takes into consideration the Administrative Law Judge's opportunity

to observe claimant's testimony and will generally give some deference to his conclusions in that regard.¹ Based upon the Board's review of the record as a whole, the Board finds that the Administrative Law Judge's September 23, 2002 Order should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bruce E. Moore dated September 23, 2002, should be and is affirmed.

	IT IS SO ORDERED.
	Dated this day of December 2002.
	BOARD MEMBER
D :	Matthew L. Bretz, Attorney for Claimant James M. McVay, Attorney for Respondent Bruce E. Moore, Administrative Law Judge Director, Division of Workers Compensation

¹ Adams v. Gilbert Central Corp., No. 193,587, 1995 WL 712425 (Kan. WCAB Oct. 31, 1995).